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MICHAEL J. SHEA 1711 WIND HAVEN WAY VIENNA, VA 22182			EXAMINER SYED, FARHAN M	
			ART UNIT	PAPER NUMBER
			2165	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/728,880

Applicant(s)

SHEA, MICHAEL J.

Examiner

FARHAN M. SYED

Art Unit

2165

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 14 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-12, 14-18, 20, 21, 23-27, 29, 30 and 48-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-12, 14-18, 20, 21, 23-27, 29, 30 and 48-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Drafts/Person's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/18/10
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-4, 7-12, 14-18, 20-21, 23-27, 29-30, and 48-58, filed 18 April 2010, are pending. The Examiner acknowledges amended claims 1, 7, 8, 11-12, 14-15, 17, 20, 26-27, 30, and 56, cancelled claims 5-6, and 19. Claims 13, 22, 28, and 31-47 were previously cancelled.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 18 April 2010 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Priority

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. The pending application is a continuation of App. No. 09/382,684, filed 25 August 1999, which is a continuation of App. No. 08/842,113, filed 28 April 1997.

Response to Remarks/Argument

4. Applicant's arguments with respect to claims 1-12, 14-21, 23-27, 29-30, and 48-58 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 14, 15, 30, and 56 are rejected under 35 U.S.C. 102(e) as being unpatentable by Hickman, Paul (U.S. 6,059,692, filed 13 December 1996)(previously presented) in view of Theimer, Marvin, et al (U.S. 5,493,692, filed 03 December 1993)(newly presented).

As per claims 1, 14, 15, 30 and 56, Hickman teaches the system of claims 1, 14, and 56, the method of claim 15, and computer program product comprising a computer-readable medium storing instructions that are executable on a computer system of claim 30, comprising: a memory storing exercise activity records for multiple exercisers (i.e. digital mass storage)(column 6, lines 50-57), the exercise activity records comprising, for each exerciser, data associated with prior exercise activities performed by the exerciser (weight trainer program can be customized for each user (i.e. exerciser) and uploaded from the local machine to a remote machine.(column 10, lines 5-67); and

a processing system (i.e. Figures 2 and 3 illustrate a processing system) programmed to identify one or more exercisers by applying one or more criteria to the stored exercise activity records (i.e. exercise programs, which are stored at the server station, which consolidates information from multiple remote systems.(column 6, lines 14-25) of each of the multiple

exercisers (i.e. each exerciser may include various individuals)(column 6, lines 20-26), to generate messages related to the identified exercisers (i.e. "Good Morning Fred!") is an illustration of a person message generated to an identified exerciser.(column 7, lines 20-35).

Hickman does not explicitly teach send the generated messages as e-mail messages.

Theimer teaches send the generated messages as e-mail messages (Figure 2 illustrate a User Agent A sending an e-mail message to User Agent B)(Figure 2).

Hickman is directed to an exercise system having a local computer control that monitors a user's usage. Theimer is directed to users of particular devices and activities in a multiple computer system based upon current location and surrounding environment. Both are analogous art, and therefore, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman with the teachings of Theimer to include send the generated messages as e-mail messages with the motivation to selectively deliver electronic messages to an identified user via a particular computer device based on context and environment (Theimer, column 1, lines 25-30).

7. Claims 5-11, 16-27, 29, 48-55, and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman, Paul (U.S. 6,059,692, filed 13 December 1996)(newly presented) in view of Theimer, Marvin, et al (U.S. 5,493,692, filed 03 December 1993)(newly presented) and in further view of Reed et al (U.S. Patent No. 5,862,325 and known hereinafter as Reed '325) (previously presented).

As per claims 7 and 21, the combination of Hickman and Theimer do not explicitly teach wherein the messages are communicated over the communication network to fitness consultants for the one or more exercisers.

Reed '325 teaches a system wherein the messages are communicated over the communication network to fitness consultants for the one or more exercisers (i.e.

"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message." The preceding text clearly indicates that a processing system is the new message processing.) (Column 5, lines 6-22).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thieme with the teachings of Reed '325 to include wherein the messages are communicated over the communication network to fitness consultants for the one or more exercisers with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 8 and 22, the combination of Hickman and Theimer do not explicitly teach wherein the database stores e-mail addresses for the exercisers and the messages comprise e-mail messages communicated over the communication network to the one or more exercisers using the e-mail addresses.

Reed '325 teaches a system wherein the database stores e-mail addresses for the exercisers and the messages comprise e-mail messages communicated over the communication network to the one or more exercisers using the e-mail addresses (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."* The preceding text clearly indicates that a processing system is the new message processing.)(Column 5, lines 6-22).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thierner with the teachings of Reed '325 to include wherein the database stores e-mail addresses for the exercisers and the messages comprise e-mail messages communicated over the

communication network to the one or more exercisers using the e-mail addresses with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 9 and 23, the combination of Hickman and Theimer do not explicitly teach wherein the messages comprise requests for replies from the one or more exercisers regarding their exercise activities.

Reed '325 teaches a system wherein the messages comprise requests for replies from the one or more exercisers regarding their exercise activities (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."*)(Column 5, lines 6-22).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thieme with the teachings of Reed '325 to include wherein the messages comprise requests for replies

from the one or more exercisers regarding their exercise activities with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 10 and 24, the combination of Hickman and Theimer do not explicitly teach wherein the processing system updates the records of exercise activities of replying exercisers based on their replies.

Reed '325 teaches a system wherein the processing system updates the records of exercise activities of replying exercisers based on their replies (i.e. "*Communications objects represent a transfer of communications intelligence, in the form of data, metadata, and instructions, from a provider to a consumer who wishes to form a communications relationship with that provider. Once the communications object has been exchanged, further communications between the provider and consumer can carry greater intelligence because they can be be originated and received as transmissions between these two communications objects. Although these messages can be structured in any form, in a preferred embodiment they are simply a special communications object type called a message object 110. This means they can be generated, encoded, transmitted, received, and processed in the same fashion as any other communications object. The only difference is that the generation or receipt of a message object may not result in an update to the sending or receiving communications object, but rather the execution of one or more methods at the sending or receiving program, and optionally changes to other objects or object components in the sending or receiving databases. A communications object update may be considered a special form of message object which includes changes to the receiving communications object.*") (Column 42, lines 40-62).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thieme with the teachings of Reed '325 to include wherein the processing system updates the records of exercise activities of replying exercisers based on their replies with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 11 and 26, the combination of Hickman and Thieme do not explicitly teach wherein the processing system generates the messages automatically.

Reed '325 teaches a system wherein the processing system generates the messages automatically (i.e. *"An automated communications system operates to transfer data, metadata and methods from a provider computer to a consumer computer through a communications network. The transferred information controls the communications relationship, including responses by the consumer computer, updating of information, and processes for future communications. Information which changes in the provider computer is automatically updated in the consumer computer through the communications system in order to maintain continuity of the relationship. The use of metadata and methods further allows for automating many of the actions underlying the communications, including communication acknowledgements and archiving of information. Service objects and partner servers provide specialized data, metadata, and method to providers and consumers to automate many common communications services and transactions useful to both providers and consumers. A combination of the provider and consumer programs and databases allows for additional functionality, including coordination of multiple users for a single database."* The preceding text clearly indicates that a system for communicating messages is the electronic mail and processing e-mail. Communicating exerciser-related

messages is merely an intended use of the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).)(Abstract) (Column 42, lines 40-62).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thiemer with the teachings of Reed '325 to include wherein the processing system generates the messages automatically with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 13 and 28, the combination of Hickman and Thiemer do not explicitly teach wherein the database comprises one or more portions that are remotely accessible to the exercisers.

Reed '325 teaches a system wherein the database comprises one or more portions that are remotely accessible to the exercisers (i.e. "FIG. 9D shows the internal structure of the Mass Storage Server (909). As shown in FIG. 9D, a Mass Storage Interface 951 provides high level methods that will be called by the Object Insertion Module (945) through RMI (Remote Method Invocation) to store Message Objects. The Mass Storage Interface 951 is the responsible for the actual communication with the Mass Storage Server, also referred to as the Database(953). The Mass Storage (953) is the actual location for storing and manipulating users' Messages, Correspondents, and Topic information. See FIG. 9-F for details on the entity relationship diagram of the database.")(Column 12, lines 3-13).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thieme with the teachings of Reed '325 to include wherein the database comprises one or more portions that are remotely accessible to the exercisers with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 25 and 29, the combination of Hickman and Thieme do not explicitly teach a storage medium storing instructions that are executable to perform the method.

Reed '325 teaches a storage medium storing instructions that are executable to perform the method (*i.e.* "Other element composite types are useful for the storage, transmission, and display of communications content between the provider and consumer. Elements of this type include text blocks, graphics, and HTML. HTML elements are especially useful in the preferred embodiment as they can contain standard HTML documents which the consumer program 22 can pass directly, or with minor modifications, to the Web browser 50 for display.")(Column 8, lines 1-10).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thieme with the teachings of Reed '325 to include a storage medium storing instructions that are executable to perform the method with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify,

automate, and increase the intelligence of communications (Reed '325, column 1, lines 10-12).

As per claims 48, 50, 52, 54, and 57, Hickman teaches wherein the message specify, for each identified exerciser, an exercise activity (see Figures 1, 4, and 7).

As per claims 49, 51, 53, 55, and 58, Hickman teaches wherein the specified exercise activity is based on the exercise activity records for the exerciser (see Figures 1, 4, and 7).

8. Claims 2-4, 12, 16-18, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman, Paul (U.S. 6,059,692, filed 13 December 1996) (newly presented) in view of Theimer, Marvin, et al (U.S. 5,493,692, filed 03 December 1993)(newly presented) and in further view of in view of Reed et al (U.S. Patent No. 6,044,205 and known hereinafter as Reed '205) (previously presented).

As per claims 2 and 16, the combination of Hickman and Theimer do not explicitly teach a system wherein the messages are generated based on when the exercisers performed exercise activities.

Reed '205 teaches a system wherein the messages are generated based on when the exercisers performed exercise activities (i.e. *"Additionally, receipt and storage of the new or updated information can trigger other actions, such as automatically forwarding the information to another consumer, exchanging information with the consumer database 21, sending an automated*

response to the provider, or sending a message to another software program on the consumer's desktop. Again, this invention provides a means for such actions to be cooperatively controlled by both the provider and the consumer through the use of object methods, which is discussed below.")(Column 10, lines 27-38).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thiemer with the teachings of Reed '205 to include a system wherein the messages are generated based on when the exercisers performed exercise activities with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

As per claims 3 and 17, the combination of Hickman and Theimer do not explicitly teach a system wherein the messages are generated based on whether the exercisers have performed exercise activities for a certain period of time.

Reed '205 teaches a system wherein the messages are generated based on whether the exercisers have performed exercise activities for a certain period of time (i.e. *"The triggering of update methods is typically controlled by a system event in the consumer program 22. Alternatively, it could be triggered by the receipt of an update trigger message from the provider program 12. The timing of the system event is controlled by one or more preferences stored in the consumers global preferences instance (114, FIG. 3). Thus, the system event could happen upon startup of the consumer program 22, at a periodic interval during the programs operation, at a specific time of day, etc. The system event could also be dependent on monitoring the system activity level of the consumer computer 2, or on other system or environment variables.*")(Column 38, lines 37-48).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thiemer with the teachings of Reed '205 to include a system wherein the messages are generated based on whether the exercisers have performed exercise activities for a certain period of time with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

As per claims 4 and 18, the combination of Hickman and Thiemer do not explicitly teach a system wherein the messages are generated based on physiological data for the exercisers measured during exercise activities.

Reed '205 teaches a system wherein the messages are generated based on physiological data for the exercisers measured during exercise activities (i.e. *"Additionally, receipt and storage of the new or updated information can trigger other actions, such as automatically forwarding the information to another consumer, exchanging information with the consumer database 21, sending an automated response to the provider, or sending a message to another software program on the consumer's desktop. Again, this invention provides a means for such actions to be cooperatively controlled by both the provider and the consumer through the use of object methods, which is discussed below."* (Column 10, lines 27-38).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thiemer with the teachings of Reed '205 to include a system wherein the messages are generated based on physiological data for the exercisers measured during exercise activities with the

motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

As per claims 12 and 27, the combination of Hickman and Theimer do not explicitly teach a system wherein the processing system generates the messages automatically on a periodic basis.

Reed '205 teaches a system wherein the processing system generates the messages automatically on a periodic basis (i.e. *"The triggering of update methods is typically controlled by a system event in the consumer program 22. Alternatively, it could be triggered by the receipt of an update trigger message from the provider program 12. The timing of the system event is controlled by one or more preferences stored in the consumers global preferences instance (114, FIG. 3). Thus, the system event could happen upon startup of the consumer program 22, at a periodic interval during the programs operation, at a specific time of day, etc. The system event could also be dependent on monitoring the system activity level of the consumer computer 2, or on other system or environment variables."*) (Column 38, lines 37-48).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Hickman and Thieme with the teachings of Reed '205 to include a system wherein the processing system generates the messages automatically on a periodic basis with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farhan M. Syed whose telephone number is 571-272-7191. The examiner can normally be reached on 8:30AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Neveen Abel-Jalil can be reached on 571-272-4074. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/F. M. S./
Examiner, Art Unit 2165
/Neveen Abel-Jalil/
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